The subject independent claims 1, 17 and 28 require the novel limitations of "means for forming a beam from the emitting tip portion having a diameter of approximately 5cm to approximately 6cm", claim 1, "amplifying and diffusing the pulses being emitted from the main body by a lens positioned adjacent to the emitting end", claim 17 and "a crystal sphere next to the emitting tip portion of the main longitudinal body", claim 28.

In addition, each of these independent claims require the limitations of "side" type "perpendicular" mounted "crystals" along with providing treatment in time periods of "up to approximately 2 minutes..."

Clearly, the TENS CAM Basic Model and TENS CAM Model 100 were the only models that were publicly disclosed by the inventor BEFORE the effective date of the subject application and both models DID NOT have these claimed features.

The use of the "crystal sphere" was NOT publicly disclosed by the inventor UNTIL about March 22, 2002 which was AFTER the subject application was filed. The side mounted crystals have NOT been publicly disclosed by the inventor.

Clearly, the BASIC TENSCAM UNIT AND MODEL 100 DID NOT GENERATE THE SAME NOVEL BEAM OUTPUT AS required by a "beam" output "having a diameter of approximately 5cm to approximately 6cm", of subject claim 1. The TENSCAM UNITS AVAILABLE AS PRIOR ART DO NOT HAVE the novel limitations of "means for forming a beam from the emitting tip portion having a diameter of approximately 5cm to approximately 6cm", claim 1, "amplifying and diffusing the pulses being emitted from the main body by a lens positioned adjacent to the emitting end", claim 17 and "a crystal sphere next to the emitting tip portion of the main longitudinal body", claim 28.

Clearly, the Tens Cam unit which is discussed as PRIOR ART in the background section of the application on page 2, lines 3+, requires "approximately 2 to approximately four(4) minutes to generate therapeutic effects..."

Furthermore, the Prior Art Tens Cam Unit as described on page 2, lines 1-3 of the background section as PRIOR ART requires a "fixed frequency of approximately 8 Herz" to generate a "beam having a diameter of approximately 1 to approximately 2 millimeters..." Clearly, these prior art references are well outside the claimed features of the independent claim 1 of the subject invention.

Still furthermore, subject dependent claim 10 has the "resonating frequency includes: a variable range of approximately 4 Hertz to approximately 15 Hertz."

Still furthermore, subject dependent claim 13 claims "means for alternating between a fixed resonating frequency, and a variable resonating frequency."

Nowhere does the Tens Cam device describe, teach or suggest these novel features. The statement in the rejection that the "Tens-Cam teaches the particular frequencies, and treatment times...." Is NOT supported by the actual Tens Cam prior art.

As noted above, the Claims 17 and 18 include similar novel features that are also NOT described, taught or suggested by the Basic TENS CAM or TENS CAM Model 100. Claim 17 claims "amplifying and diffusing the pulses being emitted from the main body by a lens positioned adjacent to the emitting end" along with the "perpendicular" type "crystals", and claim 28 claims "a crystal sphere next to the emitting tip portion of the main longitudinal body" along with the "perpendicular" type "crystals." In addition, each of these independent claims require providing treatment in time periods of "up to approximately 2 minutes..."

Applicant previously supplied a copy of the TENS CAM Revision 9/15/01, and references to public disclosure of the BASIC TENS CAM MODEL, which was effectively MODEL 100. MODEL 102, MODEL 103 and the subject PULSE CAM Model DO NOT HAVE ANY effective public disclosure dates BEFORE the subject application was filed.

As noted in the attached affidavit, the BASIC TENS CAM and TENS CAM Model 100 were NOT capable of providing the novel treatments described in the subject application. In

addition, the Murphy reference requires a light bulb as a heat source that the Applicant has distinguished over in the background section of the subject application.

It is clearly improper for the examiner to arbitrarily ignore any of the novel features of any of the claims. Under the Patent Office Rules, the examiner must cite the prior art reference(s) that shows these unsubstantiated opinions and assertions mentioned in their rejection, or remove the 103 rejection for at least these reasons alone.

The mere fact that someone in the art can rearrange parts of a reference device to meet the terms of a claim is not by itself sufficient to support a finding of obviousness. The prior art must provide a motivation or reason for someone of ordinary skill in the art, without the benefit of the inventor's specification to make the necessary changes in the reference device. Ex parte Chicago Rawhide Mfg. Co., 223 USPQ 351, 353 (Bd. Pat. App. & Inter. 1984).

There is no teaching, nor suggestion for modifying the references of record to include all the novel features of the amended claims. Under well recognized rules of the MPEP (for example, section 706.02(j)), the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438(Fed. Cir. 1991).

It might be "obvious to try" to test whether the combination of a "main longitudinal crystal having ....side crystals arranged about side portions ... the side crystals having axes being perpendicular to a longitudinal axes of the main longitudinal crystal....means for generating a resonating frequency in the main crystal which is focused by the emitting tip portion of the crystal toward an effected body part for treatment for up to approximately 2(two) minutes; and....means for forming a beam from the emitting tip portion having a diameter of approximately 5cm to approximately 6cm" of claim 1 would give treatment results as a medical treatment device. Similarly, it might be "obvious to try" to test the similar arrangements of independent claims 17 and 28. The Examiner is well aware that "obvious to try" is not the standard for determining inventiveness. See *In re Kaplan*, 789 F. 2d at 1580, 229 U.S.P.Q. at 683, where the court held that using an applicant's invention disclosure, is not a 1-year time bar, as prior art.

The available prior art references cannot be modified to incorporate the features of subject claims 1, 2, 5-10, 13-15, 17, 26-28, 30 without utilizing Applicant's disclosure. Obviousness cannot be established by combining the teachings of the prior art with Applicant's own invention to reject the claims.

Applicant respectfully requests Reconsideration in view of the Declaration/Affidavit that was submitted on 11/2/2005, allowing claims 1, 2, 5-10, 13-15, 17, 26, 27, 28, 30. Alternatively, Applicant respectfully requests that the finality of the previous office action be removed and any new action be made NONFINAL since the Examiner CANNOT properly maintain a rejection of the subject claims based on using all versions of the TENSCAM AS PRIOR ART AGAINST THE "means for forming a beam from the emitting tip portion having a diameter of approximately 5cm to approximately 6cm", claim 1, "amplifying and diffusing the pulses being emitted from the main body by a lens positioned adjacent to the emitting end", claim 17 and "a crystal sphere next to the emitting tip portion of the main longitudinal body", claim 28.

Such action is respectfully requested. If the Examiner believes that an interview would be helpful, the Examiner is requested to contact the attorney at the below listed number.

Respectfully Submitted;

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